



The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

February 12, 2004

Irving Oil Corp.  
ATTN: Gerry Lemire  
190 Commerce Way  
Portsmouth, NH 03801

**NOTICE OF NON-COMPLIANCE and  
PERMIT REVOCATION – NCPR # 04-041**

**RE BERLIN, BERLIN UNITY ST IRVING BULK, EXISTING UNDERGROUND STORAGE TANK  
FACILITY (UST #A- 0114847) (DES # 199503055)**

Dear Mr. Lemire:

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located on Unity Street, Berlin, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On August 27, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on May 12, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

**Env-Wm 1401.31 Operation of Leak Monitoring Equipment**

Env-Wm 1401.31 requires test records be maintained for interstitial monitor and release detection records. DES has determined that the annual test documentation was not available for the tank leak monitoring equipment and devices. The annual test documentation for the tank leak monitoring equipment and devices shall be provided to DES.

Also during the inspection, the visual alarms on the monitoring panel were observed to not be functioning. In accordance with Env-Wm 1401.31, the leak monitor shall employ an audible alarm and visual indicator. The visual alarms must function and written verification of their function must be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund (“the Fund”). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

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In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit # 0114847) shall be revoked effective **May 12, 2004**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

  
**COPY**

Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0584 4745

cc: Michael P. Nolin, Commissioner  
Mark Harbaugh, DES Legal Unit  
Fred McGarry, P.E., Chief Engineer, WMD  
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